

## 7.0 RECOMMENDATIONS

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I recommend that Alternative 2B: Small Notch plan be authorized for implementation as a Federal project, with such modifications thereof as in the discretion of the Commander, USACE may be advisable. The estimated first cost of the recommended plan is \$6,133,365 and the estimated annual OMRR&R cost is \$20,745. The Federal portion of the estimated first cost is \$3,986,687. The non-Federal sponsor shall, prior to implementation, agree to perform the following items of local cooperation:

a. Provide 35 percent of total project costs allocated to nonstructural flood control and at least 35 percent but no more than 50 percent of total project costs allocated to structural flood control, as further specified below:

(1) Enter into an agreement which provides, prior to execution of the project cooperation agreement, 25 percent of design costs;

(2) Provide, during construction, any additional funds needed to cover the non-federal share of design costs;

(3) Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations determined by the Government to be necessary for the construction, operation, and maintenance of the project;

(4) Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the project; and

(5) Provide, during construction, any additional costs as necessary to make its total contribution equal the percent of total project costs allocated to nonstructural flood control and at least 35 percent but no more than 50 percent of total project costs allocated to structural flood control.

b. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the non-Federal sponsor owns or controls for access to the project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project.

c. Assume responsibility of operating, maintaining, replacing, repairing, and rehabilitating (OMRR&R) the project or completed functional portions of the project, including mitigation features without cost to the Government, in a manner compatible with the project's authorized purpose and in accordance with applicable Federal and State laws and

specific directions prescribed by the Government in the OMRR&R manual and any subsequent amendments thereto.

d. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element.

e. Hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

f. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project to the extent and in such detail as would properly reflect total project costs.

g. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction, operation, and maintenance of the project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.

h. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Government determines necessary for the construction, operation, or maintenance of the project.

i. Agree that, as between the Federal Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and, to the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the project in a manner that would not cause liability to arise under CERCLA.

j. Prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation or maintenance of the Project.

k. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public law 91-646, as amended by title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements,

and rights-of-way, and performing relocations for construction, operation, and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

l. Comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army," and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans.

m. Provide the nonfederal cost share of that portion of total cultural resource preservation mitigation and data recovery costs attributable to structural and nonstructural flood control that are in excess of one percent of the total amount authorized to be appropriated for structural and nonstructural flood control.

n. Inform affected interests, at least annually, regarding the limitations of the protection afforded by the project.

o. Publicize flood plain information in the areas concerned and provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to ensure compatibility between future development and protection levels provided by the project.

p. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.

q. Agree that any part of the project identified as approved for proposed advanced work for credit under Section 104 of Public Law 99-662 must be compatible with recommended flood control project, and that any credit granted shall not relieve the non-Federal sponsor of its requirement to pay, in cash, 5 percent of total project costs allocated to structural flood control.

The recommendations contained herein reflect the information available at this time and current departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to the Congress, the sponsor, the States, interested Federal agencies, and other parties would be advised of any modifications and would be afforded an opportunity to comment further.

Craig W. Kiley  
Lieutenant Colonel, U.S. Army  
Commanding

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